

# SENATE, No. 636

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## STATE OF NEW JERSEY 215th LEGISLATURE

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PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Senator THOMAS H. KEAN, JR.**

**District 21 (Morris, Somerset and Union)**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Middlesex, Somerset and Union)**

**Co-Sponsored by:**

**Senators O'Toole and Greenstein**

**SYNOPSIS**

Prohibits the sale of certain children's products containing lead, mercury, or cadmium.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning certain children's products containing certain  
2 metals and supplementing Title 2C of the New Jersey Statutes  
3 and P.L.1960, c.39 (C.56:8-1 et seq.).  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. a. As used in this act, "children's product" means a product,  
9 including a toy or play equipment, that is designed or intended  
10 solely or primarily:

11 (1) for the care of, or use by, a child; or

12 (2) to come into contact with a child while the product is used.

13 b. For the purposes of P.L. , c. (C. ) (pending before the  
14 Legislature as this bill), "children's product" shall not be construed  
15 to include a product that may be used by or for the care of a child,  
16 but it is designed or intended for use by the general population, or  
17 segments of the general population, and not solely or primarily for  
18 use by or for the care of a child.  
19

20 2. No person shall sell, offer for sale, distribute, import, or  
21 manufacture any children's product intended for use by a child  
22 under the age of 6 containing, composed of, or made with lead,  
23 mercury, or cadmium.  
24

25 3. Any manufacturer, distributor, or importer of a children's  
26 product intended for use by a child under the age of 6, who  
27 discovers that the children's product contains, is composed of, or is  
28 made with lead, mercury, or cadmium, shall issue an immediate  
29 recall for that children's product.  
30

31 4. The Director of Consumer Affairs shall issue an immediate  
32 recall for any children's product intended for use by a child under  
33 the age of 6 which he discovers contains, is composed of, or is  
34 made with lead, mercury, or cadmium.  
35

36 5. a. Within 48 hours of receiving notice from the Director of  
37 Consumer Affairs or a manufacturer, distributor, or importer that a  
38 children's product intended for use by a child under the age of 6 has  
39 been recalled because it contains, is composed of, or is made with  
40 lead, mercury, or cadmium, a retail mercantile establishment shall  
41 remove the children's product from any display and make it  
42 unavailable for purchase.

43 b. Within 14 business days of receiving notice from the  
44 Director of Consumer Affairs or a manufacturer, distributor, or  
45 importer that a children's product intended for use by a child under  
46 the age of 6 has been recalled because it contains, is composed of,  
47 or is made with lead, mercury, or cadmium, a retail mercantile

1 establishment shall return all inventory of that children's product to  
2 the manufacturer, distributor, or importer from which it was  
3 obtained, at the cost of the manufacturer, distributor, or importer.

4  
5 6. Within 60 business days of receiving a children's product  
6 intended for use by a child under the age of 6 that has been recalled  
7 because it contains, is composed of, or is made with lead, mercury,  
8 or cadmium from a retail mercantile establishment, the  
9 manufacturer, distributor, or importer shall destroy the children's  
10 product in such a way that renders it useless, and dispose of the  
11 remnants in a manner and location designed to remove them from  
12 access by the general public.

13  
14 7. a. A person who knowingly violates section 2 of P.L. ,  
15 c. (C. ) (pending before the Legislature as this bill) shall be  
16 guilty of an unlawful practice pursuant to P.L.1960, c.39 (C.56:8-1  
17 et seq.).

18 b. A violation of section 5 of P.L. , c. (C. ) (pending  
19 before the Legislature as this bill) shall be an unlawful practice  
20 pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

21  
22 8. A violation of sections 3 or 6 of P.L. , c. (C. )  
23 (pending before the Legislature as this bill) shall be a crime of the  
24 fourth degree for a first offense, a crime of the third degree for a  
25 second offense, and a crime of the second degree for third or  
26 subsequent offenses.

27  
28 9. This act shall take effect on the first day of the seventh  
29 month following enactment.

### 30 31 32 STATEMENT

33  
34 This bill would prohibit the sale, distribution, import, or  
35 manufacture any children's product intended for use by a child  
36 under the age of 6 which contains, is composed of, or is made with  
37 lead, mercury, or cadmium.

38 Under the bill, the Director of Consumer Affairs or any  
39 manufacturer, distributor, or importer of children's products, who  
40 discovers that a children's product intended for use by a child under  
41 the age of 6 contains, is composed of, or is made with lead,  
42 mercury, or cadmium, would have to issue an immediate recall for  
43 that product. Within 48 hours of receiving notice of the recall,  
44 retail mercantile establishments would be required to remove the  
45 children's product from displays and make it unavailable for  
46 purchase. Within 14 business days, retail mercantile establishments  
47 would be required to return all inventory of the children's product

1 to the manufacturer, distributor, or importer from which it was  
2 obtained, at the cost of the manufacturer, distributor, or importer.  
3 The manufacturer, distributor, or importer would then have 60  
4 business days to destroy the children's product in such a way that  
5 renders it useless, and to dispose of the remnants in a manner and  
6 location designed to remove them from access by the general  
7 public.

8 The bill specifies the following penalties for violations:

- 9 • knowingly selling, offering for sale, distributing, importing,  
10 or manufacturing a children's product intended for use by a  
11 child under the age of 6 which contains, is composed of, or  
12 is made with lead, mercury, or cadmium would be an  
13 unlawful practice;
- 14 • failing to remove the recalled children's product from  
15 displays, make it unavailable for purchase, or return it to the  
16 manufacturer, distributor, or importer within the required  
17 timeframe would be an unlawful practice; and
- 18 • a manufacturer, distributor, or importer failing to issue an  
19 immediate recall or destroy and dispose of children's  
20 products returned to them as a result of a recall, as required,  
21 would be a crime of the fourth degree for a first offense, a  
22 crime of the third degree for a second offense, and a crime of  
23 the second degree for third or subsequent offenses.

24 An unlawful practice under the Consumer Fraud Act is  
25 punishable by a monetary penalty of not more than \$10,000 for a  
26 first offense and not more than \$20,000 for any subsequent offense.  
27 In addition, a violation can result in cease and desist orders issued  
28 by the Attorney General, the assessment of punitive damages and  
29 the awarding of treble damages and costs to the injured.

30 A crime in the fourth degree is punishable by up to 18 months  
31 imprisonment, a fine of \$10,000, or both. A crime in the third  
32 degree is punishable by three to five years imprisonment, a fine of  
33 \$15,000, or both, and a crime in the second degree is punishable by  
34 five to 10 years imprisonment, a fine of \$150,000, or both.